

## Title 200 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

### CHAPTER 3 - DEPARTMENTAL REVIEW OF APPLICATION FOR REIMBURSEMENT.

001 Conditions for Approval. The department shall review all complete applications for reimbursement submitted by responsible persons or their designated representatives. No reimbursement may be made unless the department makes the following eligibility determinations:

001.01 The tank was in substantial compliance with any rules and regulations of the United States Environmental Protection Agency, the State Fire Marshal, and the department which were applicable to the tank;

001.01A The department shall determine whether substantial compliance exists by taking into consideration:

001.01A1 The purposes of the Remedial Action Act as stated in that act; and

001.01A2 The adverse effect that any violation of the rules and regulations may have had on the tank thereby causing or contributing to the release and the extent of the remedial action thereby required;

001.02 Either the State Fire Marshal or the department was given notice of the release in substantial compliance with the rules and regulations adopted and promulgated pursuant to the NEPA and the Storage and Handling Act.

001.02A The department shall determine whether substantial compliance exists by taking into consideration:

001.02A1 The purposes of the Remedial Action Act as stated in that act; and

001.02A2 The adverse effect that any violation of the notice provisions of the rules and regulations may have had on the remedial action being taken in a prompt, effective, and efficient manner;

001.03 The responsible person reasonably cooperated with the department and the State Fire Marshal in responding to the release, including complying with departmental standards of quality and performance associated with remedial action and with the departmental timetable for remedial action, as required through Title 118, Title 126, or other applicable regulations;

001.04 The department has approved the plan submitted by the responsible person for the remedial action in accordance with the rules and regulations adopted and promulgated by the department pursuant to the NEPA or the Storage and Handling Act or that portion of the plan for which payment or reimbursement is requested;

001.04A In the event immediate remedial action is necessary to protect human health or the environment, as determined by the department, the plan for immediate remedial action which the department requires the responsible person to take may be submitted after the action has been taken;

001.04B A responsible person may undertake remedial action prior to approval of a plan by the department or during the time that remedial action at a site was suspended at any time after April 1995 because the fund was insufficient to pay reimbursements and be eligible for future reimbursement of the costs of the

remedial action if the responsible person complies with applicable procedures, rules and regulations. Reimbursement shall not occur until the department requires and approves remedial action at the site.

001.05 All costs for the remedial action, including costs under 001.07 of this chapter, were actually incurred by the responsible person or his or her designated representative after May 27, 1989, and were eligible and reasonable;

001.05A The release was first reported to the department after July 17, 1983, and within the period of time established by statute.

001.05B Costs must have been incurred in accordance with these rules, and the remedial action shall have been taken in a manner and pursuant to a timetable acceptable to the department.

001.05C Costs of remedial action shall not include costs for the actions specified in chapter 1, 011.02 of these regulations, loss of income, attorney's fees, or reimbursement for the responsible person's own time spent in planning and administering a corrective action plan;

001.06 If reimbursement for a third-party claim is involved:

001.06A The release was first reported to the department after January 1, 1990, and within the period of time established by statute;

001.06B The cause of action for the third-party claim accrued after April 26, 1991, and;

001.06C The Attorney General was notified by any person of the service of summons for the action within ten (10) days of such service; and

001.07 The responsible person or his or her designated representative has paid:

001.07A The first ten thousand dollars (\$10,000) of the cost of the remedial action or third-party claim if application is made under chapter 4, 003.01 of these regulations, or the first five thousand dollars (\$5,000) if application is made under chapter 4, 003.02 of these regulations; and

001.07B Twenty-five percent (25%) of the remaining cost of the remedial action or third-party claim, not to exceed fifteen thousand dollars (\$15,000) if application is made under chapter 4, 003.01 of these regulations, or ten thousand dollars (\$10,000) if application is made under chapter 4, 003.02 of these regulations.

002 Schedule of Reasonable Rates. The department shall prepare and make available to the public a current schedule of reasonable rates for equipment, services, material, and personnel commonly used for remedial action. The department shall apply this schedule of reasonable rates in reviewing all costs for remedial action in an application for reimbursement.

002.01 These rates are deemed to be reasonable for reimbursement for the costs of remedial action. However, the reimbursement for remedial action costs shall in no event exceed the actual costs incurred by the responsible person or his or her designated representative.

003 Application for Reimbursement in Excess of Schedule or for Remediation Expenses Not on Schedule. An application may be made for reimbursement for costs which exceed or are not included on the schedule of reasonable rates described in 002 of this chapter. However, such an application shall be

accompanied by sufficient evidence to show that the costs incurred are reasonable, as determined by the department.

003.01 The department may approve an application for reimbursement of costs if there is sufficient evidence to show that the costs incurred are reasonable.

004 Withholding Review. The department may withhold taking action on an application during the pendency of an enforcement action by the state or federal government related to the tank or a release from the tank.

005 Grounds for Denying or Reducing Reimbursement. The department may deny or reduce as much as one hundred percent (100%) a reimbursement for costs of a remedial action for failure by the responsible person to comply with applicable statutory or regulatory requirements, including the provisions of these regulations.

005.01 In determining the amount of the reimbursement reduction, the department shall consider:

005.01A The extent of and reasons for noncompliance;

005.01B The likely environmental impact of the noncompliance; and

005.01C Whether noncompliance was negligent, knowing, or willful.

005.02 Noncompliance issues for which the department will consider reimbursement reductions shall include, but are not limited to:

005.02A Tank permit and registration requirements.

005.02B Tank design, construction, installation, and repair.

005.02C Release detection requirements.

005.02D Tank gauging requirements.

005.02E Release notification requirements.

005.02F Release containment.

005.02G Failure to clean up past spills and overfills when they occurred.

005.02H Compliance with department standards of quality and performance, with department timetables, and with other applicable regulations.

005.02I Disposal of wastes.

005.03 The responsible person shall be responsible for the amount of any reductions.

006 The department may require an audit to assure compliance with these regulations. The audit will be limited to persons who have received payments from the fund. The department reserves the right to contract with an independent accounting firm to conduct the audit.

006.01 The recipient's accounting records relating to remedial actions shall be made available to the department at the time and place of the department's choosing. The audit will include, but not be limited to, such tests of the accounting records to determine that:

006.01A Funds were expended in a manner consistent with that reported to the department.

006.01B Proper equipment inventory records exist.

006.01C All necessary information needed to determine that costs represented were actually incurred.

006.02 Any funds paid to a recipient which are determined to be unallowed according to these regulations shall be considered a debt to the fund. If this debt is not paid within a reasonable period after demand, the state may reduce the debt by making an offset against other requests for reimbursement or by taking other action permitted by law.

006.03 Discovery of fraud or other misuse of payments received from the fund may result in referral to the Attorney General for appropriate action and/or in denial or reduction of additional reimbursements from the fund, pursuant to 005 of this chapter.

007 Petition for Review. Within thirty (30) days following receipt of notification of departmental action disapproving any part of an application for reimbursement, the applicant may petition for review of the disapproved portion.

007.01 A review will be heard as a contested case pursuant to Title 115 of the Nebraska Administrative Code, chapter 7, Rules of Practice and Procedure.

Enabling Legislation: Neb. Rev. Stat. §66-1518 (Supp. 1999)

Legal Citation: Title 200, Ch. 3, Nebraska Department of Environmental Quality

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